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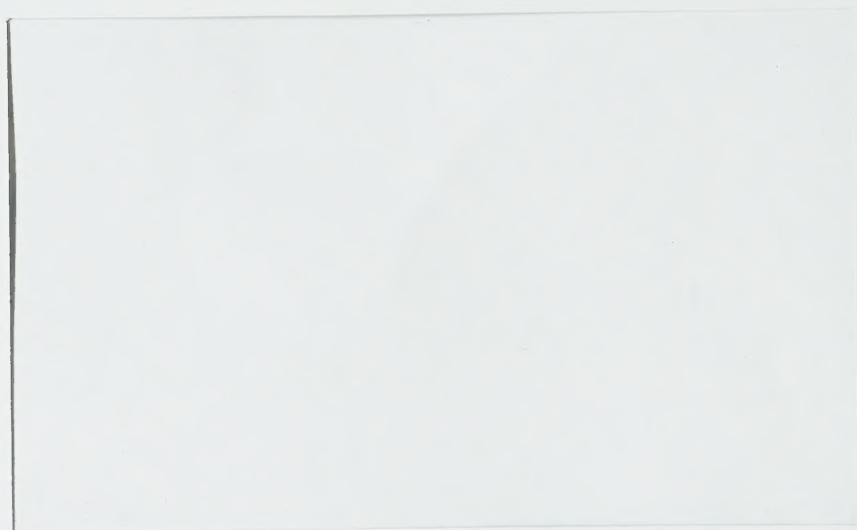
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ORIGINS OF
THE TITLE OF PREMIER

Current Issue Paper 169



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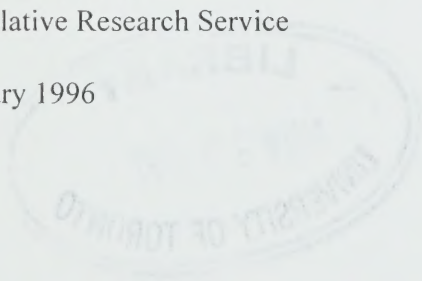
ORIGINS OF
THE TITLE OF PREMIER

Current Issue Paper 169

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INTRODUCTION

The most important public figure in Ontario politics is undoubtedly the Premier. He or she heads the Ontario government, determines the membership of the Executive Council (the cabinet), sets the agenda for the provincial bureaucracy, leads the governing political party, and represents the province in federal-provincial relations. Yet it is a striking feature of our political system that the constitution makes no mention whatsoever of the office of Premier (or of the Prime Minister).

The *Constitution Act, 1867* (formerly the *British North America Act*) vests executive power in the province in the Lieutenant-Governor, who is appointed by the federal government (s. 58). This official is advised by an Executive Council (s. 65), whose members he or she appoints (s. 63). In reality, of course, the government is conducted by the Premier and a cabinet of ministers who remain in office only so long as they retain the confidence of the elected Legislature.

This system of government, known as responsible or cabinet government, is the product of convention and usage, not of formal constitutional change. It emerged in the old province of Canada, composed of Canada West (Ontario) and Canada East (Quebec), during the 1840s. Just as the principles of responsible government evolved gradually, as adapted by practising politicians to local conditions, so did the office of Premier. In contrast to the American presidency, whose powers, responsibilities and terms of office are explicitly set out in the US Constitution, the premiership in Ontario has for the most part developed informally, always bearing the imprint of its current occupant. This flexibility is reflected in the title of the institution itself. Until recently the Premier was also referred to as the Prime Minister of Ontario. The terms were often used interchangeably by politicians, the press, and other students of Ontario politics. It was not until the 1970s that the title of Prime Minister was formally dropped and the alternative fixed in law as the appropriate appellation.

This paper tells the story of how the office of the Premier acquired its title and why Premier Davis decided in 1972 that he and his successors should no longer be referred to as Prime Minister of Ontario. It begins with a description of the origins of the title of Prime Minister in Britain. This is followed by a brief discussion of the introduction of the office and title in the old province of Canada before Confederation. The paper then outlines the development of the Ontario premiership. Finally, the paper explains Bill Davis' reform of 1972 and how it was implemented.

HISTORICAL ORIGINS OF THE TITLE OF PRIME MINISTER

Britain's first Prime Minister is conventionally identified as Sir Robert Walpole (1721-1742). In the early 19th century the monarch (King George I) was still actively involved in the operation of government. The King personally selected the peers who served as ministers of state, and met with them to discuss public policy issues. Walpole was recognized by his colleagues and by Parliament as first minister because he enjoyed the favour of the King, not because the electorate had voted him into office at the head of a disciplined majority of MPs. In his capacity as First Lord of the Treasury he controlled the dispensation of government patronage, which he exploited to secure the loyalty of enough MPs to pass government legislation.¹

It is important to note that the title of Prime Minister first entered the language as a term of opprobrium and abuse. Walpole's parliamentary enemies argued that he had improperly arrogated to himself centralized control over public policy and the distribution of government jobs and titles. An opponent in the House of Commons declared that "[a]ccording to our constitution we can have no sole and prime minister; we ought always to have several prime ministers or officers of state; every such officer has his own proper department; and no officer ought to meddle in the affairs belonging to the department of another."² In defying this precept, Walpole had offended against constitutional principle. A protest against him drawn up by some members of the House of Lords proclaimed: "We are persuaded that a sole, or even a First Minister, is an officer unknown to the law of Britain, inconsistent with the constitution of this country, and destructive of liberty in any government whatsoever."³ Walpole disclaimed such charges, protesting that he did not seek to acquire prominence over his ministerial colleagues.

The disquiet aroused by the appearance of this new office of Prime Minister persisted after Walpole's fall from power in 1742. In 1761 George Grenville declared that Prime Minister was an "odious title"⁴ (he assumed the position himself in 1763). Lord North, who was Prime Minister between 1770 and 1782, is supposed to have told his family never to call him Prime Minister.⁵ It was under Lord North's successors, Lord Rockingham and especially William Pitt, that modern cabinet government began to emerge and with it, acceptance of the necessity of a Prime Minister or Premier to head the administration.⁶

Recognition of the Title in Law

The first mention of the position of Prime Minister of Great Britain in an official document was in 1878 when Prime Minister Disraeli signed the Treaty of Berlin in his capacity as "First Lord of the Treasury and Prime Minister of Her Britannic Majesty." The position was not listed in the

official Table of Precedence until 1905. Only a handful of statutes formally cite the position. For example, the *Chequers Estate Act* (1917) refers to "the person holding the office popularly known as Prime Minister." The *Ministers of the Crown Act* (1937) refers to the salary to be paid to the "Prime Minister and First Lord of the Treasury."⁷ In the words of Sir Ivor Jennings, a distinguished student of British government, these statutory notices "are casual recognitions of a constitutional situation, not the legalisation of that situation. [The Prime Minister's] powers derive from, and are limited by, constitutional conventions."⁸

THE TITLES OF PRIME MINISTER AND PREMIER IN ONTARIO

The Introduction of Responsible Government

Under the *Act of Union* (1840), executive power in the province of Canada was vested in the Governor appointed by the British government. This official was advised by an Executive Council whose members he selected. The legislature was composed of a non-elected upper house (the Legislative Council) and an elected lower chamber (the Legislative Assembly). Until the advent of responsible government, the Governor actively ran the administration, pursuant to the Commission and Instructions issued to him by the British government.

Responsible government required that the Governor no longer be actively involved in the conduct of public affairs, leaving executive decisions to be made by a group of ministers enjoying the confidence of the Assembly. This could be accomplished without any formal amendment to the *Act of Union*. All that was required was a decision by the Colonial Office in London that henceforward the Governor should appoint to his Executive Council the party leaders who could command the support of a majority of their colleagues in the Assembly, and that he agree to assent to legislation submitted to him by his Council which had received legislative approval.

Historians point to the events of 1848-49 as the crucial stage in the introduction of responsible government in the province of Canada. In March 1848, after defeating the Conservatives in a general election, the Reform party formed a government upon the invitation of the Governor, Lord Elgin. The Reformers were the champions of responsible government in Canada and their ascension to office signified the triumph of their cause. A year later Lord Elgin assented to the Reform government's Rebellion Losses bill, which compensated the victims of the 1837 rebellions in Canada East on the same terms already awarded to those in Canada West. Lord Elgin recognized that this legislation was highly controversial among the English speaking community of Canada East and

vehemently opposed in Montreal business circles. Nevertheless, he signed the bill into law, citing the principles of responsible government.

The final stage in the evolution of responsible government and the appearance of the modern cabinet was the withdrawal of the Governor from meetings of the Executive Council. As long as he personally attended Council, ministers were unable to discuss matters freely, and agree on policies which could subsequently be presented to the Governor as the position of the government. By 1857 Sir Edmund Head, Lord Elgin's successor, was able to report to his superiors in London that it was now established practice for his ministers to meet in committee in his absence.⁹ Modern cabinet government in Ottawa and Queen's Park evolved from this committee of the Executive Council.¹⁰

It was at this point that the office of Prime Minister or Premier should have logically emerged as the salient cabinet position, as it did elsewhere in British North America. For the cabinet to function effectively as a decision-making body, one of its members had to replace the Governor as its head and spokesperson. This task was naturally assumed by the minister who led the political party in the Assembly which controlled the government.

However, local political conditions hindered the development of this office in the province of Canada during the Union period. The parties in this era were alliances between political groups based in Canada West and Canada East. These were knit together by their leaders, who often had to persuade their followers to bury their racial and ethnic prejudices in order to make common cause with their philosophical counterparts in the other section of the province. Once in power, such party coalitions assigned two ministers to each government department, one representing Canada West and the other Canada East. Officially, one of the two party leaders took precedence, but for all practical purposes governments were headed by two premiers. In the words of Professor J.M.S. Careless, the pre-eminent student of this subject, "premiers under the Union were really co-premiers, each leading his own half of the government."¹¹

As long as the government was "double-headed,"¹² to use Professor Careless' term, it was impossible for the nominal head of the government to assert an undisputed right to be addressed as either Prime Minister or Premier. Only after Confederation, when Ontario became a distinct political entity with an undivided political executive, could the Premier claim that he would be more appropriately addressed by one title rather than by the other. According to Professor Careless, during the Union period the government leaders were addressed as Premier and not as Prime Minister, though in Britain at the time the titles of Prime Minister and Premier were used interchangeably. However, it was generally felt that the

title of Prime Minister should be reserved for the head of the Imperial government, while Premier was the more appropriate designation for the colonial equivalent.¹³

Usage in Post-Confederation Ontario, 1867-1905

Before 1867 the Premiers of the province of Canada, following British precedent, also invariably served as ministers heading government departments. This was necessary because the statutory law governing the composition of the Executive Council made no mention whatsoever of the premiership, which existed exclusively in the realm of constitutional convention. Thus, the party leader recognized as Premier by the Governor was required to serve simultaneously as a minister in order to be sworn into the Executive Council and be paid a ministerial salary. The department of choice for most premiers was the Ministry of the Attorney-General.¹⁴

This practice continued in Ontario after Confederation, with the Premier continuing to serve as his own Attorney General.¹⁵ Official documents recognized the Premiers in their ministerial capacity. For example, until the commencement of the 10th Parliament in 1903, the Premier was identified in the official *Journals* of the Legislative Assembly exclusively by reference to his ministerial post, just as if he had the same status as the other members of the Executive Council. In the *Table of Precedence for Canada*, which was approved by the British government under the royal prerogative (after consultations with the Canadian government), provincial cabinet ministers were cited as "Members of the Executive Council (Provincial), within their Province," but there was no mention of the fact that among them were the premiers.¹⁶ In contrast, the *Canadian Parliamentary Companion* (later renamed the *Canadian Parliamentary Guide*), which purported to be an authoritative, though unofficial, annual almanac of Canadian government, did clearly identify the provincial premiers.

The Whitney Reforms

The government led by Premier James P. Whitney (1905-1914) initiated significant reforms to the machinery of government at Queen's Park. These reforms included changes to the office and status of the Premier.

In 1905 Whitney created a new ministerial portfolio, the President of the Executive Council, which he filled.¹⁷ This enabled him to continue to sit on the Executive Council without also assuming a ministerial office which entailed heavy administrative responsibilities, such as the Ministry of the Attorney General. The bureaucratic staff in this new department directly served the Premier in his capacity as head of the government. According

to a recent study, the creation of this portfolio reflected the need for a strengthened central office which could provide administrative support to the Premier and the cabinet in an era when government was assuming a myriad of new responsibilities and the ministerial bureaucracies were expanding in size and number.¹⁸

Whitney also formally changed his title from Premier to Prime Minister. In the *Public Accounts* for 1906, his office was listed as the "Office of the Prime Minister and President of the Executive Council," a change from the 1905 listing of "Premier and President of the Executive Council." (The "Office" was eventually changed to "Department"). The *Journals* of the Legislative Assembly began to formally refer to him as Prime Minister.

In 1907 the Whitney government introduced legislation which for the first time formally acknowledged the existence of the position of Premier. The *Salaries Act*, S.O. 1907, c. 7, provided for a separate salary for the Premier. As noted above, hitherto he had only received a salary for the ministerial position he had invariably assumed in addition to serving as head of the Executive Council. Ss. 2(2) of this Act referred to the position of Premier as "the Member of the Executive Council holding the recognized position of First Minister." This phrasing allowed the holder of the position to continue to refer to himself as either Prime Minister or Premier.¹⁹

From Whitney to Davis

Under Whitney's successors both titles were used, though not, it appears from the historical record, in any consistent manner. The incumbent's private office continued to be formally known as the "Department of the Prime Minister." On the other hand, the *Journals* of the Legislative Assembly varied its usage. Whitney's immediate successor, William Hearst (1914-1919), was cited as Prime Minister, just as Whitney had been. However, for the next two incumbents, E.C. Drury (1919-1923) and Howard Ferguson (1923-1930), the *Journals* reverted to the older title of Premier. After George Henry assumed the office in 1930, the *Journals* began to cite him as Prime Minister. Under Mitch Hepburn (1934-1942) both titles were employed. In 1923 the official *Table of Precedence* for Canada was amended to provide formal recognition for the first time to the offices of Prime Minister and Premier. The premiers were listed as the "Prime Ministers of the Provinces of Canada" - though Ontario was the only province in which a premier had claimed the right to refer to himself as Prime Minister.

After George Drew became Premier in 1943 formal usage at Queen's Park seemed to favour the designation of Prime Minister. The *Journals* consistently referred to Mr. Drew and his Conservative successors under

this heading. The *Canadian Parliamentary Guide* switched to "Prime Minister" for the edition published after the 1943 election and retained it until Mr. Davis's reforms of the early 1970s. During a legislative debate on this issue in 1971, Liberal leader Robert Nixon, whose father Harry Nixon had been the Liberal Premier defeated by George Drew in 1943, recounted the following memory of that era:

My dad used to be Premier of Ontario and he said one time that the biggest change after the election in 1943 was that all of the stationery that had been imprinted and embossed "Office of the Premier" was thrown out by the new incumbent and new stationery printed up embossed "Office of the Prime Minister."²⁰

On the other hand, the revised *Table of Precedence* for Canada published in 1954 adopted the phrase "The Premiers of the Provinces of Canada," another example of the flexibility of the constitution under the conventions of responsible government.

The Davis Reforms

When Bill Davis assumed the office in February 1971, the Premier of Ontario was referred to in common parlance as both Prime Minister and Premier. However, his office was formally entitled the Department of the Prime Minister, and appeared under this heading in the government telephone book, in the spending estimates presented to the Legislature for approval, and in the *Public Accounts*. This Department published press releases which referred to Mr. Davis as Prime Minister, and the title pages of the official texts of his speeches invariably referred to him as Prime Minister.²¹

On July 20, 1971, NDP leader Stephen Lewis rose in the Legislature to ask:

Is it true that the Premier has hired an historian to decide whether the Premier's designation should be Premier or Prime Minister, and that he is examining the historical usage of these terms in the preparation of a report for the Prime Minister?²²

Mr. Davis acknowledged that the distinguished historian J.M.S. Careless had been asked to study the question and submit his findings to the government. He promised that he would report to the House as soon as Professor Careless had completed his research. Mr. Davis emphasized that his objective in commissioning a professional historian to look into the matter was to establish the correct historical usage.

However, Mr. Davis made no further announcements in the Legislature on what conclusions, if any, Professor Careless had communicated to him on the appropriate historical usage. In 1972 he dropped all references to his position as provincial Prime Minister. In his biography of Bill Davis, Claire Hoy suggests that Mr. Davis actually made the change because he believed "there is just one prime minister in Canada."²³

After February 1972, the texts of press releases and speeches published by his office referred to him exclusively as Premier. The spending estimates for his office submitted to the Legislature and debated in June 1972 were presented as the estimates of the Office of the Premier.²⁴ In September 1972 the letterhead used by his office was formally changed from the Department of the Prime Minister to the Office of the Premier. In the government telephone book published in September 1972 his office formally appeared as the Office of the Premier for the first time.

After the June 1972 debate in the Legislature on the Premier's office budget, it quickly became the practice among the Members to refer to Mr. Davis as the Premier only, and no longer as Prime Minister. Long before he left office in 1984, the designation of Prime Minister had become an historical anachronism. However, it was not until 1983 that the statutory law was formally amended to reflect the change in practice. In that year the reference in the *Executive Council Act* to the Premier as "the Member of the Executive Council holding the recognized position of First Minister" was eliminated, and replaced with the wording still used, "Premier and President of the [Executive] Council."²⁵

CONCLUSION

How the office of the Premier acquired its official designation offers an interesting footnote to the story of responsible government in Ontario. The occupants of the top job in the Ontario government have always enjoyed considerable freedom in re-writing not only their job descriptions, but also their job title. This has been possible because the institutional framework within which they operate is only partially embodied in a written constitution.²⁶

Mr. Davis' reforms have laid to rest a debate begun in the first decade of the century by his Conservative predecessor, James P. Whitney. However, regardless of the propriety of addressing a Premier of a province as Prime Minister, it is indisputable that in the provincial political universe the Premier occupies the same position of prominence that the Prime Minister does in the federal. The well-known Latin maxim which political scientists invoke to describe the position of a Prime Minister, *primus inter pares* (first among equals), is no less applicable to the Premier of Ontario.

NOTES

¹ For a discussion see Byrum E. Carter, *The Office of Prime Minister* (Princeton: Princeton University Press, 1956), pp. 22-24. The standard biography of Walpole is the two volume study by J.H. Plumb, *Sir Robert Walpole: The Making of a Statesman* (London: The Cresset Press, 1956), and *Sir Robert Walpole: The King's Minister* (London: The Cresset Press, 1960).

² Quoted in John Morley, *Walpole* (London: Macmillan and Co., 1890), p.163.

³ Ibid., p. 164.

⁴ Ibid., p. 162.

⁵ Ibid.

⁶ Ibid., pp. 162-163; see also Sir David Lindsay Keir, *The Constitutional History of Modern Britain Since 1485*, eighth edition (London: Adam & Charles Black, 1966), pp. 375-383.

⁷ Historically, the Prime Minister has also held a ministerial position, such as First Lord of the Treasury.

⁸ Sir Ivor Jennings, *Cabinet Government*, third edition (Cambridge: Cambridge University Press, 1961), p. 207.

⁹ D.G.G. Kerr, *Sir Edmund Head: A Scholarly Governor* (Toronto: University of Toronto Press, 1954), pp. 175-176.

¹⁰ See Norman McLeod Rogers, "The Introduction of Cabinet Government in Canada," *Canadian Bar Review* XI:1 (January 1933): 1-17, and J.R. Mallory, "Cabinets and Councils in Canada," *Public Law* 2 (1957): 231-251.

¹¹ J.M.S. Careless, "The Place, the Office, the Times, and the Men," in *The Pre-Confederation Premiers*, ed. J.M.S. Careless (Toronto: University of Toronto Press, 1985), p. 8.

¹² Ibid

¹³ Ibid., p. 12.

¹⁴ The office of Attorney-General was the pivotal position on the Executive Council in pre-Confederation Canada. For background see J.E. Hodgetts, *Pioneer Public Service: An Administrative History of the United*

Canadas, 1841-1867 (Toronto: University of Toronto Press, 1956), pp 82-84.

¹⁵ With the exception of Premier George Ross (1899-1905), who also served as Treasurer.

¹⁶ For the original *Table of Precedence*, see Alpheus Todd, *Parliamentary Government in the British Colonies*, second edition (London: Longmans, Green & Co., 1894), pp. 317-320. The citation for the federal cabinet in the *Table of Precedence* also made no reference to the position of Prime Minister.

¹⁷ *An Act to amend the Act respecting the Executive Council*, S.O. 1905, c.5, s. 4.

¹⁸ J.E. Hodgetts, *From Arm's Length to Hands-On: The Formative Years of Ontario's Public Service, 1867-1940* (Toronto: University of Toronto Press, 1995), chapter seven.

¹⁹ In the 1914 consolidation of the province's statute book, the statutory formula in the *Salaries Act* was transferred to the *Executive Council Act*, R.S.O. 1914, c.13, s. 4(2), and thereafter preserved until Premier Davis' reforms.

²⁰ Ontario, Legislative Assembly, *Hansard: Official Report of Debates*, 28th Parliament, 4th Session (26 July 1971): 4810.

²¹ The Order-in-Council of April 14, 1971 (O.C. 1143/71) establishing the Ontario Historical Studies Series declared that one of the responsibilities of its Board of Trustees was "to contract with recognized scholars to undertake research and writing on the life and times of those who have occupied the office of Prime Minister of Ontario..."

²² Ontario, Legislative Assembly, *Hansard: Official Report of Debates*, 28th Parliament, 4th Session (20 July 1971): 4276.

²³ Claire Hoy, *Bill Davis* (Toronto: Methuen, 1985), p. 170.

²⁴ Commencing with fiscal year 1972-73, the *Public Accounts* adopted the "Office of the Premier" designation.

²⁵ *Executive Council Amendment Act*, 1983, S.O. 1983, c. 49, ss. 1(1). For the current statutory reference see *Executive Council Act*, R.S.O. 1990, c. E.25, ss. 2(1). In contrast, the first explicit statutory reference in federal law to the position of Prime Minister appeared in 1950, with the passage of the *Prime Minister's Residence Act*, S.C. 1950, c. 48. Hitherto, the position was typically referred to as "the recognized position of First

Minister or any person holding the office of the President of the King's Privy Council for Canada" (see e.g. *The Senate and House of Commons Act*, R.S.C. 1927, c. 147, s. 13). It should be noted that this phrasing is similar to that used in Ontario after 1907. The historical practice among the other provinces varies. For example, explicit statutory references to the position of Premier appeared in Prince Edward Island statutes as early as 1912, i.e., *An Act to amend "an Act Respecting Certain Departments of The Public Service,"* S.P.E.I., 1912, c. 6, s. 1. In Quebec, the official title of the Premier is "Premier Ministre", which of course literally translates as "First Minister." In contemporary Canadian politics, the appellation of "First Minister" is often used in constitutional documents and communiqués to describe the Prime Minister and the 10 Premiers when they gather in conclave.

²⁶ The public architecture of the province offers a visible and permanent reminder of the era brought to a close by Mr. Davis. For many years it was common for the corner stone of new public buildings to be ceremonially put in place by the Premier of the day at a public gathering. These stones were formally inscribed with the Premier's name and the date. Before Mr. Davis' reforms, these inscriptions used the title of Prime Minister, not Premier. Examples from around Queen's Park include the Alumni Hall of St. Michael's College northeast of the Park, whose corner stone was laid by Prime Minister Howard Ferguson in 1929; the Frost Building (North) on Queen's Park Crescent, whose corner stone was laid by the building's namesake, Prime Minister Leslie Frost, in 1954; and the University of Toronto's Wallberg Memorial Building on College St. West, whose corner stone was laid by Prime Minister George Drew in 1947.

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